

Columbus Mills, Inc. and Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC.
Cases 10-CA-23883, 10-CA-24111, and 10-RC-13769

May 31, 1991

**DECISION, ORDER, AND DIRECTION OF
SECOND ELECTION**

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On March 29, 1990, Administrative Law Judge William N. Cates issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,¹ and conclusions, and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Columbus Mills, Inc., Eufala, Phoenix City, and Union Springs, Alabama, and Columbus, Georgia, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

IT IS FURTHER ORDERED that the election conducted on November 16 and 17, 1988, in Case 10-RC-13769 is set aside.

[Direction of Second Election omitted from publication.]

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We adopt the judge's finding in sec. H of his decision that the Respondent violated Sec. 8(a)(1) of the Act by statements that unlawfully threatened job loss. We rely, however, solely on President Parham's statements that union supporters would become hostile, and that problems would develop between workers. These problems, Parham said, would lead to reduced production that would cause business losses that would result in all the employees being out of a job. We find it unnecessary to pass on other statements discussed in sec. H concerning strike replacements and loss of jobs.

We also agree with the judge that the Respondent, through Manager of Maintenance Irvin, promised employees job protection if they rejected the Union as their collective-bargaining representative, in violation of Sec. 8(a)(1). In doing so, we rely solely on employee Cobb's testimony that Irvin told employees in early November, after Irvin became a supervisor, that their jobs would be protected if they turned against the Union. We find it unnecessary to pass on whether a similar promise made to employee J. Foster by Irvin, prior to Irvin's promotion to supervisor, violated Sec. 8(a)(1) because finding an additional violation would be cumulative and would not materially affect the Order.

Susan Pease-Langford, Esq., for the General Counsel.

Fred M. Richardson and Richard O. Brown, Esqs. (Constangy, Brooks & Smith), of Birmingham, Alabama, for the Company.
Joseph Alvarez, Esq., of Columbus, Georgia, for the Union.

DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge. These cases were heard in Columbus, Georgia, on October 3 and 4, 1989, based on unfair labor practice charges filed on January 5, 1989,¹ in Case 10-CA-23883 and on April 26, 1989, in Case 10-CA-24111 by Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC (Union). An order consolidating cases, amended consolidated complaint and notice of hearing (complaint) was issued by the Regional Director for Region 10 of the National Labor Relations Board (Board) on June 7, 1989. The complaint alleges that Columbus Mills, Inc. (Company) through its supervisors and agents violated Section 8(a)(1) of the National Labor Relations Act (Act) by soliciting employee grievances and promising to remedy said grievances if its employees rejected the Union; threatening its employees with disciplinary actions if they were caught talking about the Union; threatening its employees with discharge if they joined or engaged in activities on behalf of the Union; promising to protect its employees' jobs if they rejected the Union as their collective-bargaining representative; informing its employees they would get the fringe benefits they wanted if they ceased their support for the Union, but if they selected the Union as their bargaining representative they would not get anything; prohibiting its employees from distributing union literature on company property during working hours while allowing antiunion employees to distribute literature opposing the Union; threatening its employees with loss of jobs if they joined or engaged in activities on behalf of the Union; threatening its employees that its customers would refuse to do business with it unless the employees rejected the Union; promising its employees improved retirement benefits if they refrained from joining the Union; creating an impression of surveillance of its employees' union activities by telling its employees it knew the identity of those who accepted union handbills; threatening to close its plants if its employees joined or engaged in activities on behalf of the Union; and threatening its employees with loss of benefits and reductions in pay if they selected the Union as their collective-bargaining representative. The Company's timely filed answer denies the commission of any unfair labor practices. The allegations of the complaint were consolidated for hearing with the Union's objections to conduct affecting results of election in Case 10-RC-13769 which election had been conducted on November 16 and 17, 1988.²

¹ All dates hereinafter are 1988 unless otherwise indicated.

² The election was conducted pursuant to a stipulated election agreement approved on October 26. The employees were grouped into two units with unit A consisting of the production and maintenance employees of the Company at its Columbus, Georgia and nearby Phoenix City, Alabama facilities. Unit B consisted of the production and maintenance employees of the Company at its Eufala and Union Springs, Alabama facilities. The tally of ballots showed that of approximately 520 eligible voters in unit A, 139 cast valid votes for and 325 cast valid votes against the Union. There were no void ballots and 54 challenged ballots, an insufficient number to affect the results of the election.

Continued

The parties were afforded full opportunity to examine and cross-examine witnesses, to argue orally, and to submit briefs. Briefs, which have been carefully considered, have been submitted by counsel for the General Counsel, counsel for the Union, and counsel for the Company.

On the entire record,³ including my observations of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. THE COMPANY'S BUSINESS AND THE UNION'S LABOR ORGANIZATION STATUS PRELIMINARY CONCLUSIONS OF LAW

The Company is a Georgia corporation with offices and places of business located in Columbus, Georgia, and Phoenix City, Eufala, and Union Springs, Alabama, where it is engaged in the manufacture of carpet yarn. Jurisdiction is not an issue. The complaint alleges, the Company admits, and I find, it is, and at all times material herein has been, an employer engaged in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The complaint alleges, the Company admits, and I find, the Union is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Company is a long-term manufacturer of carpet yarn at its four facilities located in Georgia and Alabama. The Company employs approximately 850 production and maintenance employees in addition to its management personnel. The Company is directed by President and Chief Operating Officer Charles Parham. He is assisted in various capacities by Vice President of Manufacturing Larry Jeffers; General Manager of the Yarn Division Paul Lee; Manager of Maintenance Facilities Cecil Calhoun; Personnel Manager Angela Davis; Union Springs, Alabama, Plant Manager Lawrence Penn; Plant Manager Jim Rowe; and Eufala, Alabama, Facility Supervisors Wayne Hart and Charles Patterson, all of whom were called as witnesses by the Company and are admitted to be supervisors and/or agents of the Company. The Company also called Manager of Maintenance Terry Irvin as a witness and acknowledged he has been a supervisor and agent of the Company within the meaning of the Act since on or about October 16, 1989.⁴

Counsel for the General Counsel called 10 witnesses who were former or are current employees of the Company. The 10 were Lee Norris Foster, Clara Person, Lintern Wilburn, Julia Mae Jones, Allene Griglen, Hattie Maddox, Velma C. Henderson, Linda J. Duke, John Peter Foster, and Gary Cobb.

The Union called no witnesses.

tion. In unit B of the approximately 332 eligible voters, 148 cast valid ballot votes for and 178 cast valid votes against the Union. There were no void ballots and two challenged ballots, an insufficient number to affect the results of the election.

³I have considered all record evidence whether alluded to in this decision or not.

⁴Prior to his current assignment, Irvin was a chief electrician. The Company contests his supervisory and/or agency status while in that position.

The critical period for consideration with respect to the Union's objections to conduct affecting the results of the election is from September 22 to November 17.

B. Alleged Solicitation of Grievances

Columbus, Georgia location employee Cobb, an active union supporter, stated that after the union campaign started in September he and members of his maintenance team (Pete Foster, Dan Struble, Dean Melton, and Lawrence Price) had several meetings with Manager of Maintenance Calhoun in which they talked about the Union. Cobb testified Calhoun asked why they were interested in the Union and what they thought the Union would do for them. Cobb said they talked to Calhoun about benefits they wanted including a credit union, dental insurance, seniority, pay, and a complaints committee. Cobb testified:

[U]sually when we would talk about this he [Calhoun] would tell us he couldn't promise us anything but would like to know what we wanted officially and then he would let us know unofficially that we could get these things if we would not continue to fight for the union. . . .

He would say this is personally between us or I don't want this going any further or actually when I say unofficially, off the record. I think usually he used off the record.

Cobb said he and the others talked about the Union a lot with Calhoun because "We figured if he was discussing it with us and trying to talk us out of the union he wouldn't be bothering the other employees that were weaker than us."

Columbus, Georgia location tufting department employee Maddox testified the Company conducted regularly scheduled quality control meetings for the tufting and material handling department employees. Usually Plant Manager Rowe conducted the meetings. Maddox testified the format for the meetings changed in early September in that after the quality control part of the meeting had ended, Rowe announced the Company had set aside 15 minutes of "donated" time in order to hear any complaints the employees might wish to express. Maddox said that after Rowe asked for complaints the employees discussed issues such as communications between the employees and management and other working conditions. Maddox stated Rowe said he would look into the complaints.

Maddox recalled other meetings Rowe attended but at which Vice President of Manufacturing Jeffers spoke. These meetings were held in the conference room and the employees talked among other things about retirement, seniority, and a credit union. Jeffers promised to look into these complaints. Maddox testified Jeffers drew a diagram representing the Union, management, and employees on a chalkboard and told them the Union was trying to come between them and management but they did not need anyone to come between them, that they could discuss "things" and "solve our problems ourselves."

Columbus, Georgia location employee Henderson, an 11-year employee, testified she was instructed to attend a meeting the last week in September at which Vice President of Manufacturing Jeffers presided and at which Plant Manager Rowe was in attendance. She stated Jeffers asked the em-

employees what their "likes and dislikes" were with the Company. She said the employees mentioned better retirement, a credit union, better insurance, longer breaks, and vacations. Henderson testified Jeffers said he could guarantee the employees a better retirement. Henderson said she asked if he could prove that in writing. She said Jeffers picked up a "little black manual" and said "It's all written down in here." Henderson stated an employee mentioned that some machines were malfunctioning in the plant in that the machines started without the start button being pressed. Jeffers and Rowe both told the employees they would get to that problem immediately after the meeting. Henderson stated they in fact tried to correct her machine immediately after the meeting. Henderson testified some employees complained about the way Supervisors Louis Parker and Ralph Daniel treated them. She said Jeffers told them, "Well, we will work on that." According to Henderson, Parker was fired approximately 3 or 4 days later. Henderson testified that in 11 years with the Company she had never before attended a meeting where employees were asked about their likes and dislikes of the Company.

Active union supporter and Columbus, Georgia location electrician J. Foster testified he attended a meeting with other employees in the conference room the first week in November at which Vice President of Manufacturing Jeffers presided along Plant Manager Rowe.⁵ According to Foster, Jeffers said the employees and management should be together without a union and announced he had called the meeting to discuss employee complaints. Foster said complaints were voiced concerning shift supervisors following employees around the plant; about the Company nurse, and about the permanent layoff of long term employees. Foster, who had worked for the Company 5-1/2 years at that time, said he had never before attended a meeting where employees were asked about their complaints or concerns.

Former Eufala, Alabama location employee L. Foster testified he attended a small group meeting in late October at which President Parham spoke. Foster said Parham introduced himself and then announced, "We are going to talk about the likes and the dislikes" you have with the Company. According to Foster, Parham wrote the subjects discussed by the employees on a chalkboard. He said Parham indicated he wanted to start with the employee dislikes. Foster said he asked Parham about retirement. After writing retirement on the board, Parham asked if he was thinking about retiring right then. Foster told him he was not. Foster said he then asked about disability benefits, night shift differential pay, and a dental insurance plan. Foster said only one item was listed under "likes" the employees had for the Company and that was it provided "steady work." Foster testified Parham talked about each item labeled "dislikes" that he had listed on the chalkboard. Foster said, for example, Parham told them the Company had a retirement plan put together but that he could not discuss it at that time. Foster testified Parham said there was not anything he could do about night shift differential pay at that time. Foster testified Parham said he could not promise the employees anything but he would look into why they only got 12 hours of holiday pay. Foster testified Parham said, with respect to com-

plaints about management's attitude toward its employees, that he most definitely could do something about that.

Foster testified that after the meeting was over, he asked President Parham why the employees were getting so much attention, was it because of the upcoming representation election? According to Foster, Parham said that Swift (apparently the owner of the Company) did not want a union and they were trying to find out what the problems were so they could solve them between management and the employees instead of having a union. Parham told Foster he probably would not be around much after the election was over, that he did not visit the plants very often, and probably would not see the employees for a year.

Columbus, Georgia location employee Duke testified that approximately 3 to 4 weeks before the Board conducted representation election that she and approximately 14 other employees were asked to attend a small group meeting conducted by President Parham. Duke testified Parham started the meeting by introducing himself and a couple of other persons who were present and then said, "It had come to their attention that we had some grievances, and some problems that they had not been aware of previously and that he wanted to discuss these with us." She stated one employee complained about not having anyone in management to talk to. Duke testified Parham responded that he had an open-door policy and they could come straight to him without going through their supervisors. Duke said that prior to that time, she had never heard of an open-door policy and added:

As a matter of fact, before we had been told that we had to go through the system, of going to our supervisor directly above us, and then from there up through the different steps of supervisors.

Duke testified Parham had a pad of paper on an easel on which he wrote out the employee complaints such as job postings, job seniority, treatment of employees, and other work-related problems. Duke testified Parham told the employees the Company had been trying to restructure its benefits package since July but because they were in the middle of a union campaign, he could not really go into details at that time. She stated he also said he could not make the employees any promises "but he did want us to hear . . . to understand that he was hearing what we were saying." Duke testified that in her 5-1/2 years with the Company, she had never attended a meeting like this one before.

Eufala, Alabama location employee Griglen testified President Parham visited the Eufala facility for the first time ever in October. She, along with approximately 15 other employees, were asked to meet with Parham in the plant conference room. Griglen testified:

Mr. Parham introduced himself to us, and then he began to ask the employees to list their likes and their dislikes about the company.

Griglen further testified:

Some of the dislikes were the vacation time. The employees wanted to know why we could not get two weeks vacation, or why we were not eligible to take our vacation when we wanted to. About why did the longevity pay stop at fifteen years. We wanted to know

⁵ Foster said Rowe took notes during the meeting.

why, when election time came and we would have to leave the plant, why we could not get paid for this. Also, we discussed the retirement and disability.

...

We wanted to know why did the supervisors always talk to the employees like they wanted to.

Griglen testified Parham told the employees he could take care of the supervisors' attitude toward the employees. Griglen said Parham first wrote out the employee dislikes and covered them one by one with the employees. Griglen said she had worked for the Company 18 years and had never been to a meeting like the one with President Parham.

Then Manager of Maintenance Calhoun (he is no longer employed by the Company) testified he had a close relationship with the employees in his department and maintained an "excellent dialogue" with them. Calhoun said that in talking with the employees in his department, the subjects of seniority, layoffs, a credit union, and pay may have been discussed. He acknowledged, although somewhat reluctantly, that the discussions at times also centered on the Union. Calhoun, however, said he had no recollection of asking the employees why they were interested in a union. He specifically denied ever telling the employees they could get the benefits they wanted if the union was voted out but not if it was voted in. Calhoun testified he had, for at least 2 years, maintained a "suggestion box" in the shop area and that he had gotten "a multitude of comments" from it on personal as well as job-related matters. Calhoun maintained the suggestion box "was an open-door form of communication between myself and the maintenance department." Calhoun said he always followed up on any suggestion placed in the suggestion box.

Plant Manager Rowe testified he held quality control meetings once a month with the various departments and in doing so reviewed safety as well as job-related and others problems that may have arisen during the month. He said that at the end of the meetings employees have always been asked for questions for at least 2 years. Rowe testified the September meeting took place the first week in September. He could not recall any questions being asked about benefits at that meeting nor could he recall any complaints being made about communications or working conditions. He testified the format for that meeting was not changed in any manner from previous meetings.

Vice President of Manufacturing Jeffers testified he held several small group meetings with employees during the first week in November. He said the purpose of the meetings was to answer the numerous questions that had arise regarding the Union and the upcoming representation election and how that election would be conducted. Jeffers said he tried to explain, as best he could, how collective bargaining worked. Jeffers also explained the Company's position regarding the Union in that the Company did not favor nor feel the employees needed a union. Jeffers stated that at the end of the meetings he asked if there were any questions. He said the employees had numerous questions related to employee benefits such as a dental plan, better pension coverage, and a seniority system. Jeffers testified he told the employees that he knew for a fact the Company had been reviewing its current pension plan for several months but that he did not know what the outcome would be, that it was simply under review. Jeffers stated that employee Velma Henderson made a com-

ment about her particular machine not working properly in that it would start without the start button being pushed. Jeffers said he told Henderson he would have Plant Manager Rowe follow up on that problem immediately after their meeting because it concerned safety. Jeffers specifically denied asking the employees for their problems or complaints or that he or Plant Manager Rowe ever said they would look into the employees' complaints. He also specifically denied asking the employees what they liked or disliked about the Company. Jeffers also specifically denied ever telling Velma Henderson that he had retirement facts written in a little black book. He denied using a flip chart but rather said he used a chalkboard during his talks with employees. Jeffers testified that each of the meetings he held with the employees was essentially the same in that he told the employees they were there to receive any questions they had but denied he told the employees they were there to hear their complaints.

President Parham said he held small group meetings with employees as a result of a union flier that criticized him for not answering employee questions. At the small group meetings, he said he introduced himself and then reminded the employees he had told them he would be back "to hear comments or questions" they had and then announced that the floor was open for their comments or questions. Parham stated that as the employees made comments, he wrote them down on a flip chart which he labeled "don't like or dislikes or something." He said that when he filled up a flip chart page, he stopped and tried to respond to each of the questions in some form or fashion. He testified:

I generally responded—I gave them my opinion. If I liked it I said that was fine with me. If I didn't like it, I said I don't like that. And I explained my feelings about them.

Parham said he told the employees that he could hear their comments and give them his opinion but he could not promise them anything. Parham said one of the complaints voiced involved the attitude of supervisors toward the employees and supervisors' treatment of the employees. He said he responded to those complaints by saying the policy of the Company had been and continued to be that each employee would be treated with respect and that he personally would not tolerate anything less than that. Parham said the subject of the Company's retirement plan was raised and that he told the employees it had been under review for some time "and that undoubtedly changes would be made" but what those changes would be he did not know and could not promise.⁶ Parham specifically denied asking employees what their dislikes were. He did acknowledge, however, that after he had written out a flip chart full of things the employees did not like that "I asked them is there anything you do like" and at that point "started another list." Parham denied having any discussion with employee Foster after one of the small group meetings and further denied ever telling Foster the employees were getting attention because of the Union. Parham also denied telling any employee that he and Swift were try-

⁶Parham testified the Company's retirement plan was having to be revamped because of requirements outlined in sec. 89 of the Internal Revenue Code.

ing to find out what the problems were so they could work together on them without the Union.

Absent a previous practice of doing so, the solicitation of grievances during an organizational campaign accompanied by a promise expressed or implied to remedy such grievances violates the Act. See *Reliance Electric Co.*, 191 NLRB 44 (1971), and *Raley's, Inc.*, 236 NLRB 971 (1978). It is the promise, expressed or implied, to remedy the grievances that constitutes the essence of the violation. Solicitation of grievances in the midst of a union campaign inherently constitutes an implied promise to remedy the grievances. *Gurley Refining Co.*, 285 NLRB 38 (1987). The fact an employer's representative does not make a commitment to specifically take corrective action does not abrogate the anticipation of improved conditions expectable for the employees involved. The Board noted in *Blue Grass Industries*, 287 NLRB 274 fn. 4 (1987), that although it had a longstanding policy that the solicitation of grievances by an employer at preelection meetings raised an inference the employer was promising to remedy the same it was an inference that could be rebutted by the employer.

It is undisputed that Manager of Maintenance Calhoun discussed the Union and various other subjects of concern with his employees. Such concerns involved seniority, layoffs, a credit union, and wages. I find this to be the case because Calhoun, although with some reluctance, acknowledged discussing the Union and other matters with his employees because he had a close relationship with them. I credit employee Cobb's testimony⁷ that Calhoun told the employees he could not promise them anything but that he wanted to know officially what benefits they wanted and to unofficially let them know they could get what they wanted if they discontinued fighting for the Union.

It is clear Calhoun actively solicited employee grievances and specifically promised, albeit unofficially to correct them if the employees ceased their support for the Union. Such violates Section 8(a)(1) of the Act and I so find. Even if Calhoun's "suggestion box" constituted prior solicitation of grievances, such would not serve as a defense to his flagrant solicitation of grievances herein, inasmuch as he conditioned any favorable responses on the employees' ceasing their fight for the Union.

It is undisputed that Plant Manager Rowe had conducted quality control meetings with the employees under his supervision for an extended period of time. However, I find, as testified to by employee Maddox, that the format changed somewhat at the September meeting. I specifically credit Maddox's testimony that Rowe set aside 15 minutes for the express purpose of allowing employees to voice any complaints they had about the Company. I further credit her testimony that she specifically mentioned the problem of communication between management and the employees and that other working conditions were discussed. I am persuaded that Rowe, as testified to by Maddox, promised to look into those concerns. I find Rowe's asking for employee complaints and promising to look into them violated Section 8(a)(1) of the Act.

⁷In addition to Cobb's favorable demeanor, I note the Company was very interested in learning what the problems were that had generated support for the Union among its employees and Cobb's statements fit within the Company's desires.

I credit employee J. Foster's testimony that Vice President of Manufacturing Jeffers told the employees in the group meeting he attended that they should be able to get together without a union and then asked for employee complaints. I also credit employee Henderson's testimony that Jeffers asked the employees in the group meeting she attended what their "likes" and "dislikes" were about the Company. Henderson credibly stated Jeffers said in response to comments about retirement that he could guarantee the employees a better retirement system. Employee Maddox credibly testified Jeffers promised the employees in the group meeting she attended to look into complaints related to retirement, seniority and an employee credit union. Likewise, Maddox credibly testified Jeffers told the employees they could discuss their problems without the need for anyone to come between the employees and management. I find Jeffers' comments outlined above constituted solicitation of grievances in violation of Section 8(a)(1) of the Act.

It is undisputed that President Parham held numerous small group meetings with employees at the Company's Georgia and Alabama facilities. Parham held the small group meetings in response to assertions by the Union that he would not answer questions raised by the employees related to the union campaign and Company benefits. Parham solicited input from the employees attending the meetings. I am persuaded Parham asked, as testified to by Griglen, that the employees state their likes and dislikes about the Company. Griglen's testimony in that respect was supported by the testimony of employees Duke and L. Foster. For example, L. Foster testified Parham, after introducing himself, told the employees they were going to discuss their likes and dislikes at the Company and he was going to write down their dislikes first "and then we'll come back and we'll discuss them." Duke testified President Parham said it had come to the Company's attention the employees had some grievances and problems and he wanted to discuss those with the employees. Although Parham denied asking the employees to state their likes and dislikes about the Company, he did acknowledge making a flip chart list of the employees' responses to his inquiries and that he labeled them "don't like or dislike or something." In asking the employees to tell him their likes and dislikes, Parham was actually soliciting the employees to state their grievances with the Company. It is quite clear President Parham had not previously conducted such small group meetings with the employees. In that regard, employee Griglen credibly testified that in her 18 years with the Company, she had never attended such a meeting with Parham. Employee Duke likewise credibly testified that in her 5-1/2 years with the Company, she had never attended any such meeting. Furthermore, L. Foster's credible testimony about a brief conversation he alone had with President Parham after one of the small group meetings illuminates the purpose and motive for Parham's meetings. Foster testified he asked President Parham why the employees were getting so much attention. Parham said it was because of the upcoming representation election and added that they (he and Swift) did not want a union at the Company and they were trying to find out what problems existed so they could "solve them out between us, instead of having a union." The evidence persuades me President Parham both expressly and impliedly promised to remedy certain of the employees' stated grievances. For example, employee Duke credibly testified about

a complaint that was raised at the group meeting she attended related to employees not having anyone to talk with and that President Parham told the group they could come straight to him without going through supervision, that he had an open-door policy. Duke stated that prior to that time, she had never heard of an open-door policy and added "we had been told that we had to go through the system, of going to our supervisor directly above us, and then from there up through the different steps of supervisors." It is undisputed that President Parham announced to the employees in response to inquiries about the Company's retirement system that the system had been "under review for some time and that undoubtedly changes would be made" but "what those changes were [he] did not know and could not promise." Although the Company's retirement system had been under review for some time as a result of changes in the Internal Revenue Service Code, there is no showing the Company had announced or in any manner informed its employees, prior to the advent of the Union that its system was under review. When the timing of such an announcement coincides with organizational activity, as is the case herein, it is not unreasonable to draw an inference, as I do, of improper interference motivated by a desire to interfere with employees' freedom of choice in a representation campaign. See, e.g., *Elston Electronics Corp.*, 292 NLRB 510 fn. 2 (1989). There is no showing in the instant case that the Company had a legitimate business reason for the timing of its announcement with respect to changing its retirement benefits. This is especially so in light of the fact the Company called the meetings in question to seek out employee grievances. Furthermore, as testified to by employee Duke, President Parham wanted the employees at the meetings to know he had heard what they said about retirement among other benefits. Implicit in Parham's comments is the message that although he could not promise them anything at that time, he wanted them to know he had heard what they had said and noted "undoubtedly changes would be made."

It is also undisputed that the employees' perception of management's attitude toward its employees was discussed in Parham's small group meetings. L. Foster credibly testified Parham said "I most definite[ly] can do something about that." Employee Griglen credibly testified Parham promised to "take care of" the way supervision talked to the employees. She explained that Parham said he had already started correcting the problem because it was his policy to treat employees with dignity and respect and in correcting the problem he would not be instituting any new policy. Assuming it had always been President Parham's policy to treat employees with dignity and respect, he nevertheless announced he had taken, and was continuing to take, corrective action related thereto, however, he did so in the context of soliciting employee grievances with a purpose of working out whatever problems existed without the intervention of a union. Such constitutes a violation of Section 8(a)(1) of the Act and I so find.

In summary, I find, as alleged in the complaint, that the Company acting through Manager of Maintenance Calhoun, Plant Manager Rowe, Vice President of Manufacturing Jeffers, and President Parham solicited grievances from its employees in the midst of the union campaign at its facilities and both expressly and impliedly promised to remedy the same, and as such, violated Section 8(a)(1) of the Act.

C. Alleged Threats of Disciplinary Action for Talking About the Union

Employee Cobb, a maintenance team leader (team members J. Foster, Dan Struble, Dean Melton, and Lawrence Price), testified that he and his team members have to go throughout the Columbus, Georgia facility in order to accomplish their maintenance duties. He said that around October, Manager of Maintenance Calhoun announced⁸ "we were not to talk to other employees about the Union business during working hours." Cobb said Calhoun told them "if [they] were caught discussing the Union with other employees on their machines that [they] would be fired." Cobb testified he overheard employees talking against the Union on the plant floor in the presence of supervisors but that nothing was said to those employees.

Employee J. Foster, a well-known union supporter who worked at the Company's Columbus, Georgia facility, testified the union's campaign began in mid-September and that sometime thereafter his supervisor, Calhoun, told him and other maintenance employees (Cobb, Dan Struble, Dean Melton, and Lawrence Price) "not to talk to people out in the plant or else we would be subject to disciplinary action." J. Foster said the Company did not have a rule against talking in the plant prior to that time that he was aware of. J. Foster testified Calhoun did not say anything about their tending to their job duties when he gave his no-talking instructions. J. Foster said he quit talking about the Union after Calhoun spoke with him but continued to talk about other subjects with fellow employees. He said no action was taken against him for doing so.⁹

Manager of Maintenance Calhoun acknowledged he held a meeting with the maintenance employees "concerning talking about the Union during work." He said he spoke to all maintenance employees that were present on the day in question. Calhoun said he held the meeting at the request of Vice President of Manufacturing Jeffers who had told him he (Jeffers) had complaints from other departments that the maintenance employees had been interfering with production work in the complaining employees' departments. Calhoun told the maintenance employees:

I explained to the people that these complaints had come from these other workers who were performing their productive functions in their departments, they had voiced concern that our people were interfering with their production work, and I had been asked to bring this to the attention of everyone.

Calhoun denied telling the employees they could not talk to others about the Union.

Although called as a witness by the Company, Vice President of Manufacturing Jeffers did not testify with respect to any complaints about the maintenance employees interfering with the production work of other department employees nor did he testify about any instructions he may have given Calhoun on that subject.

I credit Cobb's testimony regarding the instructions he said Calhoun gave to the members of his maintenance team

⁸ Cobb said all of his team members, with the exception of J. Foster, were present when Calhoun made his comments.

⁹ J. Foster said that as a maintenance troubleshooter, he had to talk with employees in order to accomplish his job duties.

regarding talking about the Union in the plant. Cobb's testimony was in essential part supported by J. Foster's account of Calhoun's instructions. I am unwilling to rely on Calhoun's testimony at any point that it conflicts with Cobb's and J. Foster's. In that regard, if the Company had received the complaints that Calhoun asserts Jeffers mentioned, I am persuaded Jeffers would have alluded to such and would have mentioned his instructions to Calhoun in his testimony. I find Calhoun, as testified to by Cobb, told the employees not to talk about the Union with other employees.

An employer, even when faced with a union campaign, may formulate rules necessary to preserve production and discipline if it acts for legitimate business reasons rather than for union reasons. See, e.g., *Brigadier Industries Corp.*, 271 NLRB 656 at 657 (1984). However, under the Act, an employer may not for union reasons or in a disparate manner penalize employees for discussing the union during working time.

In the instant case, I am persuaded the no-talking rule announced by Calhoun was for the sole purpose of interfering with employees talking about the Union and not for any legitimate business-related considerations. If at the time Calhoun made his announcement there had been interference with production or discipline then I am convinced Vice President of Manufacturing Jeffers would have testified about those concerns inasmuch as he was the one to whom the alleged complaints had been made. Calhoun not only instructed his employees not to talk about the Union but also warned them they would be fired if they were caught doing so. Such clearly violates Section 8(a)(1) of the Act and I so find. See, e.g., *Cave Springs Theatre*, 287 NLRB 4 (1987).

D. Alleged Threats of Discharge

Eleven-year Eufala, Alabama location employee Person testified that as far as she knew, the union campaign commenced in approximately late July or early August and that she thereafter had several discussions with Supervisor Patterson about the Union. Person stated Patterson told her on more than one occasion in October and November when he talked with her in the work area that "come January '89, all the old employees would be out the door, and they would have to hire all new employees" and that he would "sure hate training all those new employees." She stated they had been discussing the union prior to Patterson making the above comments but added the conversation did not take place in the context of Patterson talking about permanently replacing striking employees.

Employee Jones testified her supervisor, Patterson, had several conversations with she and others during the union campaign. She said that on one specific occasion Patterson told her while they were alone in the card room and after she had handbilled at the plant that day that come January 1989, she would be crying. Jones said she told Patterson "If I cry, then let me cry" and added that at least she would be crying about something she believed in and had stood up for. Jones further testified that Patterson:

also said that come January, '89, that we would regret it. And I asked him, 'Regret what?' And he was talking about the campaign—campaigning for the Union. And he said that the onliest thing he really hated about that, is that he would have to train new people.

Supervisor Patterson said he had several conversations with Jones and Person in which they discussed the Union. Patterson denied, however, seeing Jones or Person handing out union literature at the Eufala plant gate. Patterson likewise denied ever telling employees Jones or Person that as of January 1, 1989, the old employees would be out the door and new ones hired or words to that effect. Patterson further denied telling Jones she would regret campaigning for the Union of that he would have to train new employees.

I credit Jones' and Person's mutually corroborative testimony as outlined above. Person appeared generally candid and impressed me as attempting to testify truthfully and with carefully thought through recollections.

In context it is reasonable to infer and conclude, as I do, that Patterson's comments to Jones and Person constituted not so veiled threats that employees supporting the Union would be discharged and new ones would be brought in to replace them and that he did not look forward to that task.¹⁰ Patterson's threatening statements violated Section 8(a)(1) of the Act and I so find. Cf. *Overnite Transportation Co.*, 296 NLRB 669 (1989).

E. Alleged Promises to Protect Jobs if the Employees Rejected the Union

Employee J. Foster testified that then chief electrician and current manager of maintenance Irvin came to his work area during the first week of October and commented to him while they were alone "the union's not going to make it in and if you turn around I can give you protection on your job." According to J. Foster, Irvin stated he would soon be in a position to give him job protection in exchange for his backing away from supporting the Union.¹¹ J. Foster said that about 20 minutes after this conversation Irvin became manager of maintenance.

Employee Cobb testified Irvin told he and fellow employees Dan Struble and Dean Melton in early November that it would not do them any good to get a union in at the Company and:

Then he told us that he would promise us that our jobs would be protected if we turned against the union and that he also would promise—He made us two promises. He said—Well, he told us he promises his left nut that we would be protected, wouldn't lose our jobs if we turn against the union, and promised the right nut that we would get the things that we wanted, the benefits we were seeking . . . if we will turn against the union.

Irvin testified he had a conversation concerning the Union with employees Cobb, J. Foster, Dean Melton, and Lawrence Price on or about October 7. He said Cobb started the conversation by saying he believed that through a union the employees would be able to get benefits such as dental insurance. Irvin said he told the employees he did not think they would simply by voting in the Union. Irvin stated Cobb said his primary goal was to get more benefits for every employee and to get management's attention. Irvin said he told Cobb and the others that if that was Cobb's goal, he had cer-

¹⁰ The fact that Patterson indicated the old employees would be gone after the first of the year would be at a time after the Board-conducted election had taken place.

¹¹ Foster said Irvin did not talk about anything else in their conversation.

tainly succeeded in getting management's attention. Irvin testified Cobb responded "that he believed that he couldn't stop in midstream at this time, that he had proceeded too far to turn around, that he had to continue with what he was fighting for." According to Irvin, Cobb expressed fear for his job. Irvin said he told Cobb it was his understanding no one could be fired for their involvement with the union but that if it would make him feel any better, he would arrange a meeting for him with Vice President of Manufacturing Jeffers or Manager of Maintenance Calhoun. Cobb told Irvin he did not want to do that. Irvin testified employee Melton then mentioned that he bet the employees would get some benefits if the Union was voted in. Irvin testified "I told him I bet my left nut we would not." According to Irvin, that ended the conversation. Irvin denied ever telling employee J. Foster that if he backed away from supporting the Union, he (Irvin) would protect his (Foster's) job. Irvin also denied telling Foster he would soon be in a position to help him.

The evidence establishes Irvin was promoted to the position of manager of maintenance on October 16.

I credit J. Foster's testimony that Irvin told him he would soon be in a position to do so and would protect his job if he turned away from the Union. I am not unmindful that Foster placed the date of the conversation as being the first week of October. I am also mindful Irvin was not made manager of manufacturing until October 16, however, I do not find those factors sufficient to detract from or cause an outright rejection of Foster's testimony. Foster placed the conversation as taking place within 20 minutes of the time Irvin was made manager of maintenance. Based on Foster's demeanor and the record evidence on this point, I am persuaded he was simply mistaken as to the date of the conversation and not that the conversation occurred or what was said in the conversation. Furthermore, it is reasonable to infer that Irvin knew before he was actually promoted that he was going to be promoted. Such an inference tends to lend credence to Foster's testimony that Irvin told him he would soon be in a position to protect his (Foster's) job.

I also credit Cobb's above-outlined testimony. Cobb appeared to be testifying truthfully. Accordingly, I find Irvin requested that Cobb and the others turn away from the Union in order to protect their jobs.

I find, as alleged in the complaint, that the Company, through Irvin, promised employees job protection if they rejected the Union as their collective-bargaining representative. Such violates Section 8(a)(1) of the Act and I so find. See, e.g., *Franks Flower Express*, 219 NLRB 149 at 154-155 (1975).¹²

F. Alleged Promise of Desired Benefits if Employees Stopped Supporting the Union and Nothing if They Did Not

Employee Cobb testified that in early November Manager of Maintenance Irvin had a "friendly" discussion with Cobb and employees Dan Struble and Dean Melton concerning employee benefits and the Union. According to Cobb, Irvin said that if the employees turned against the Union, they

would get the things they wanted and the benefits they sought. Cobb testified Irvin:

told us that it wouldn't do us any good to get a union in there, that if we got the union in there it wouldn't give us what we wanted. And if we did get some of the things we wanted it would be a trade off because he said the things we already had would have to be traded for new benefits.

Manager of Maintenance Irvin's best recollection was that he had a conversation with certain maintenance employees on October 7 that focused on the union campaign and related matters. Irvin's full account of the conversation is set forth under section E of this decision and will not be repeated here.

As indicated in section E of this Decision, I have credited Cobb's testimony regarding what was said in the employees' meeting with Irvin and when it took place. In crediting Cobb's testimony, I find the discussion took place in November at a time when Irvin was manager of maintenance and not in early October when he was chief electrician.¹³ Although the discussions were "friendly," such does not lessen the impact or negate the unlawfulness of Irvin's comments. Simply stated, Irvin told the employees they would not get what they wanted by bringing in the Union but they would get the "things" they desired and the "benefits" they sought if they turned away from or rejected the Union. Irvin's predictions the employees would not get what they wanted if they voted in the Union were not based on any objective factual basis that could have made his predictions permissible under Section 8(a)(1) of the Act. See *Laidlaw Transit*, 297 NLRB 742 (1990). Thus, I find Irvin's predictions contained a promise and a threat and as such clearly violated Section 8(a)(1) of the Act. See, e.g., *Murco, Inc.*, 266 NLRB 1175, 1177-1178 (1983).

G. The Alleged Prohibition Related to Distributing Prounion Literature

J. Foster testified he was the first employee to distribute a personal prounion letter as a handbill at the plant gate. He said that up until that time he and the other maintenance employees had been permitted to leave work 5 to 10 minutes before their shifts ended. However, after he handbilled, he said they were no longer allowed to but that the employees who campaigned against the Union were still allowed to.

Cobb testified he and other maintenance employees handbilled for the Union at the plant gate. He said they were thereafter told by Managers of Maintenance Irvin and Calhoun they could not hand out prounion literature during working hours. Cobb said that on a particular occasion in late October or early November, Irvin told he and employees Melton and Struble they would be fired if they handed out prounion literature during working hours. Cobb said that even after being told they could not pass out prounion literature, he observed employees during working hours distributing antiunion literature.

Manager of Maintenance Irvin testified that around the last week in October, employee Cobb asked about getting off

¹²I find it is of no moment that Irvin was not in fact a supervisor within the meaning of Sec. 2(11) of the Act at the time he made a job protection promise to employee J. Foster because Irvin was made a supervisor within 20 minutes of the conversation and in the conversation he had held out to Foster that he very shortly would be in a position to make good on his promise.

¹³The Company does not dispute that Irvin was a supervisor within the meaning of the Act on and after October 16.

work early to hand out union literature. Irvin said he told Cobb he could not allow him to leave early for that reason but if he had a doctor's appointment or any valid reason he would allow him to do so. According to Irvin, Cobb said the Union's representatives had told him not to lie to his supervisor so he had attempted to be honest with him as to why he wanted off. Irvin testified that a few days thereafter, Cobb asked why he had denied him permission to leave early to hand out union literature but was allowing employees against the Union to hand out procompany literature during working hours. Irvin told Cobb he had not allowed anyone to do that. Cobb told Irvin three employees were doing so at that very time. Irvin said he went to the dock doors and observed employees Kenneth Goulsby, Elliot Goulsby, and Billy Mathis handing out Company literature at the plant gate. Irvin said he did nothing at that time but called all three of them together the next day and told them they were not to do that and advised them they should consider his comments to be a verbal warning and if he observed them doing it again, he would give them a written warning. Irvin stated he thereafter had his secretary prepare a memorandum which he posted on the bulletin board that stated; "No one is to leave shop area before the buzzer sounds for shift change without permission of Theodore Johnson or Terry Irvin." Irvin specifically denied ever telling Cobb that if he passed out literature on company property during working hours, he would be fired.

I credit Foster's and Cobb's testimony related to the distribution of prounion literature at the Company. Their testimony was mutually corroborative in that both had restrictions placed on their distribution activities while those against the Union did not. Employees Cobb, Melton, and Struble were even told they would be discharged if they persisted in their prounion distribution activities. That procompany employees were allowed to distribute literature without being immediately stopped is evident from Irvin's own testimony. He acknowledged he did not immediately stop three employees that were distributing procompany literature during working time even though it was brought to his attention by employee Cobb. Irvin, rather, waited until the next day to speak with the three procompany employees. The fact that he spoke with them the next day does not, in my opinion, timely remedy the preferential treatment afforded the procompany employees in that they were allowed to continue their procompany activities at the plant gate during working time. Neither does the fact Irvin thereafter posted a notice to all employees not to leave work early without permission remedy the favorable treatment afforded the procompany employees nor does such posting remedy the threat Irvin made to Cobb and the others that they would be discharged if they continued their prounion distribution activities. Accordingly, I find the Company's rule, as orally promulgated by Manager of Maintenance Irvin, prohibiting distribution during working hours was invalid inasmuch as it was directly solely against prounion distribution. Because the prohibition unlawfully restricted union activities, I find it unnecessary to determine whether it was otherwise overly broad and impermissible under the standards established in *Essex International*, 211 NLRB 749 (1974), and *Our Way, Inc.*, 268 NLRB 394 (1983). See also *C.O.W. Industries*, 276 NLRB 960 (1985).

H. Alleged Threats of Loss of Jobs

Employee Griglen testified she attended a small (15-employee) group meeting conducted by General Manager of the Yarn Division Lee during the latter part of October or first part of November. Griglen testified Lee:

had slides, showing us films about what could happen if the employees went out on strike. Cars were being set on fire, the doors were tore off the cars. And he also stated that if we went out on strike, that they did not have to hire us back . . . he didn't say what kind of strike that we would be going out on. He just said we probably wouldn't have a job.

Employee Duke testified she attended a small (14-employee) group meeting conducted by President Parham approximately 3 or 4 weeks before the Board-conducted representation election at the Company. She said that after Parham introduced himself, addressed his "open-door policy," discussed the employees' "likes and dislikes," announced he wanted to:

give us an idea of how things would go, that the Union supporters would become hostile. And that there would be problems—this would cause problems between co-workers in the plant. And that as a result of the problems between the co-workers, production would drop off. And when production dropped off, we would lose business. And when we lost business, we would all be out of a job.

And that in the event that the Union did come in, that he had no doubt in his mind that they would fight very hard to get us a good contract. But at the same time, he knew Mr. Swift, and he knew that he would fight just as hard not to give us one. Because they didn't have to give us anything, and he was one hundred per cent beside Mr. Swift on this. And that when they refused to give us a contract, that we would be forced out on strike. And when we went out on strike, that they could hire other workers to come in and replace us on our jobs permanently.

Lee testified he conducted a series of small (10–13 employees) group meetings at the Company's Alabama facilities. Lee's testimony in pertinent part follows:

Q. During the union campaign, did you ever discuss economics strikes with the employees?

A. Yes, sir, I did.

. . . .

Q. What did you tell the employees during those meetings about economic strikes?

A. That Columbus Mills could in fact hire permanent replacements for economic strikers.

Q. During the meetings, did you discuss the subject of termination of economic strikers?

A. Yes, sir.

. . . .

Q. What did you say about the termination of economic strikers?

A. That the Company could not terminate strikers, that we could hire permanent replacements for economic strikers.

Q. Did you distinguish between unfair labor practice strikers and economic strikers during those meetings?

A. No.

Q. Did you discuss ULP strikes during those meetings?

A. No, sir.

I credit Griglen's uncontradicted testimony that Lee gave a slide presentation at the small group meeting she attended and in which presentation it was illustrated what could happen if employees went on strike. I further credit her unchallenged testimony that cars were depicted in the slides as being burned and/or damaged such as having the doors torn from the automobiles. I am persuaded Lee told the employees, as testified to by Griglen, that the Company would not have to hire the employees back and that they probably would not have a job. I also am persuaded, as acknowledged by Griglen on cross-examination, that Lee did at some point in his presentation mention the words economic strikes. However, I am unwilling to credit Lee's full testimony on that subject. Lee was never asked what was said when questioned by company counsel, rather, he was asked if he discussed "economic strikes" with the employees and was asked what he told the employees about economic strikes. I am convinced Lee's trial testimony about economic strikes was clearer and given in greater detail than what he actually said to the employees in the small group meeting attended by Griglen based on Griglen's credited and in part uncontradicted testimony.

President Parham testified he conducted a series of small group meetings with employees during the first week in November. Parham said he explained to the employees "some of the various basic tenants of collective bargaining." Parham could not recall saying anything in his small group meetings about pronoun employees creating a hostile environment at the Company or that Swift would fight not to give a good contract or that there would be a strike. Parham specifically denied saying union supporters would drive the Company out of business. Parham testified:

I said that if there were a contract and it came to—or if there were a win for the union and it came to negotiating a contract that the company had the same rights as the unions in negotiating a contract and that Mr. Swift—neither Mr. Swift nor I would agree to anything that was not in the best interest of Columbus Mills and its employees.

I am persuaded Duke's testimony more nearly reflects what Parham said at the meeting she attended than does Parham's testimony. Duke's somewhat detailed testimony was in contrast to Parham's sometimes lack of recall. For example, Parham did not deny but simply stated he could not recall telling the employees the union supporters would become hostile. Parham likewise did not deny but stated he could not recall telling the employees Swift would fight not to give a good contract in negotiations and there would be a strike.

The Board stated in *Eagle Comtronics*, 263 NLRB 515 (1982), that an employer does not violate the Act by inform-

ing its employees truthfully that they are subject to permanent replacement in the event of an economic strike. However, the Board did indicate that if a statement could be "fairly understood as a threat of reprisal against employees or [was] explicitly coupled with such threats," it was not protected by Section 8(c) of the Act but ran afoul of the Act. Lee's statements coupled with his slide presentation falls into that latter category. Lee told the employees he was going to show them what would happen if they went on strike. He then showed slides depicting violent acts by strikers and stated if there was a strike, the Company did not have to hire the employees back and they "probably wouldn't have a job." I conclude and find that his comments and slide presentation could be fairly understood to be threats of reprisals and as such violated the Act in that it indicated employees would be deprived of their rights in a manner inconsistent with those detailed in *Laidlaw Corp.*, 171 NLRB 1366 (1968), enfd. 414 F.2d 99 (7th Cir. 1969), cert. denied 397 U.S. 920 (1969). See also *Fern Terrace Lodge of Bowling Green*, 297 NLRB 8 fn. 9 (1989).

I likewise find that President Parham's statements fall outside the protection of Section 8(c) of the Act. Parham told the employees that union supporters would become hostile, that problems would develop between workers that would lead to reduced production that would cause business losses that would result in all of the employees being out of a job. It was in that context that Parham told the employees the Company "didn't have to give [them] anything" and when it refused to give them a contract they would be forced out on strike. Parham then informed the employees that when they went on strike the Company could hire workers to come in and permanently replace them. Again, these comments of a management representative could be "fairly understood as a threat of reprisal against employees." Parham's statements implied the Union would be responsible for actions that would put all of the employees out of a job and would cause them to be permanently replaced. Parham's comments went well beyond a mere recitation of an employer's right to permanently replace economic strikers.

In summary, I find President Parham's and General Manager of the Yarn Division Lee's statements unlawfully implied and threatened job losses as a result of a strike and as such interfered with employees' Section 7 rights thus violating Section 8(a)(1) of the Act.

I. Alleged Threat that Customers Would Refuse to do Business with the Company

Former employee Henderson testified she attended a meeting on October 31, at which President Parham spoke. She said Parham, after introducing himself, told the employees how long he had worked for Swift and acknowledged the employees had found out that Swift also owned oil companies as well as carpet yarn businesses. Henderson testified Parham said "the Union had sabotaged one of the dye house areas" and that "Fieldcrest [another company] was about [to] close down because of the union." Henderson said Parham then made a reference to "the good book" and suggested the employees should "do unto others as they would have them to do unto you." According to Henderson, Parham stated customers had written the company saying "if we get the union in there that they would no longer order

from our company.” Henderson stated Parham then said “that a whole lot of people would be out of a job.”¹⁴

Jones testified Parham told the employees in the meeting she attended that Swift was “the type of man that wouldn’t tolerate a union in his company.” According to Jones, Parham then stated the papers he had in his hands were letters from companies that were customers of the Company. Jones testified:

[He] said that he had received letters from customers who were saying that they had heard that he had a union thing going on down there. And he better get this thing straightened out, because if he didn’t—well, he said the union—when you have a union in a place, it needs to get straightened out, because we need yarn. And we want yarn, and we want it on time.

And he said, well, you know, customers are like—some of them, I believe he said, was his friends. But then when you run a business, you can not combine the two. You need to get the yarn out on time. If you don’t get it out on time, the customers will buy the yarn from somebody else. And then there goes the customers—there goes the company.

President Parham testified he gave a speech to all employees in the Columbus, Georgia facility approximately a week before the election. Parham said he had a written speech that he followed “in substance” but not “word for word.” Parham denied telling the employees that if the Union got in customers would not order from the Company anymore. Parham testified:

I informed everybody that I had received letters from customers who expressed a great deal of concern over our ability to continue on-time delivery.

Parham also denied telling the employees that the Fieldcrest Company would close because of the union. Parham testified:

I said that that was a rumor to the effect that Fieldcrest would close because it had become noncompetitive.

It is well settled that during a union campaign, an employer is free to communicate to its employees its views on the relative merits of unionization and its rejection. An employer has the right to oppose unionism and to say so to its employees so long as the communications do not contain threats of reprisals or promises of benefits. *NLRB v. Gissel Packing Co.*, 395 U.S. 575 at 618 (1969); *La-Z-Boy*, 281 NLRB 338, 340 (1986). It is also well established that employer predictions of adverse consequences arising from sources outside its control are required to have an objective factual basis in order to be permissible under Section 8(a)(1) of the Act. See *Laidlaw Transit*, 297 NLRB 742 (1990), and the cases cited therein.

I credit Henderson’s testimony. The substance of what she attributed to President Parham about customers’ reactions to unionization at the Company was supported by employee Jones’ account of Parham’s comments. Parham acknowl-

edged he was not reading from a speech when he talked about customers’ reactions to unionization at the Company.¹⁵

I am persuaded Parham could not lawfully suggest as he did to the employees that if the Union came in, certain of the Company’s customers “would no longer order from [the] company” and “a whole lot of people would be out of a job.” Nor could he lawfully suggest that the Union “thing” needed to be straightened out in order to get yarn out on time or customers would go elsewhere for their yarn which would cause the Company to fail without demonstrating to the employees that such a chain of causation would be brought about through forces beyond the Company’s control. Parham’s recitation of the consequences of unionization lacked sufficient objective data or explication to make them permissible and as such his comments violated Section 8(a)(1) of the Act.¹⁶

J. Alleged Promises of Improved Retirement Benefits

Employees Person and Jones testified Supervisor Patterson talked with them approximately a week before the election about union negotiations and employee benefits. Person testified Patterson told them they did not need a union, that “things” were going to get better. Patterson told Jones and Person the Company had already started to work on its retirement plan even before the Union had come on the scene. Person testified Patterson had a calculator which he used to figure increases in retirement benefits for the employees. Jones testified Patterson said benefits were “going from 2.50 to 3.00 per year of service” with the Company. Jones further testified Patterson said employees with 10 years of service would get a \$60 increase in benefits, those with 15 years would get a \$90 increase and those with 20 years of service would get a \$120 increase. According to employee Person, Patterson told them the improved benefits would go into effect “the 17th, the same day we voted.” She stated, however, that the changes were not implemented on that date.

Supervisor Patterson testified he had a number of conversations with employees Person and Jones about the Union and negotiations. He said some of the conversations were individually with Person or Jones while others were with the two of them together. Patterson stated that at the time he had these conversations, the Company had been working on its retirement plan and that he told employee Jones that when she asked him, Patterson said he told Jones “I can’t give you no figure what it will be but . . . I think it [is] going to be increased.”¹⁷ Patterson said he had been told about the forthcoming changes in retirement benefits by his superiors but that he had not been informed of any specific changes. Patterson specifically denied telling employees Jones or Person how much the revised plan would pay and further denied using a calculator to calculate employee benefit increases under any revised plan. Patterson said he did not even learn of the specifics in the revised plan until it was posted on a bulletin board at the Company on January 1, 1989.

¹⁵ The context of, or circumstances surrounding, the customers’ letters are not known inasmuch as the letters were not offered into evidence.

¹⁶ A finding of a violation of the Act is particularly warranted in this case when Parham’s comments are viewed in the context of the Company’s overall hostility to unionization at its facilities. See *Harrison Steel Castings Co.*, 293 NLRB 1158 (1989).

¹⁷ Patterson said he did not notice if anyone else was present at the time he made this statement to Jones.

¹⁴ Henderson stated Parham did not read from a speech when he talked with the employees.

I credit the mutually corroborated testimony of employees Jones and Person regarding Supervisor Patterson's comments to them about the Company's efforts to improve its retirement benefit plan.¹⁸ It is not disputed on this record that the Company had as a result of certain changes in Federal tax law been in the process of revising its retirement benefit plan for sometime. However, there is no showing on this record that the Company had at any time prior to the advent of the Union advised its employees it was revising its retirement plan. As is noted elsewhere in this Decision, the Company's announcement regarding future changes in its retirement plan would, in my opinion, not have been made at the time it was in the absence of union activity. Here, Patterson is discussing union negotiations and related matters with employees under his supervision and it is in that context that he informs the employees that things are going to get better without a union and that an increase in retirement benefits is in the works. He even attempted to calculate for the employees precisely what the increases would be.

Accordingly, I find as alleged in the complaint that the Company, through Patterson, promised its employees improved retirement benefits if they refrained from joining or engaging in activities on behalf of the Union.

K. Alleged Impression of Surveillance

Employee Wilburn, an active union supporter, testified that about a week before the Board-conducted election he had a conversation with his supervisor, Patterson, about his handbilling at the plant gate. Wilburn testified Patterson told him "he knew who was out on the gate passing [out] leaflets" and that General Manager of the Yarn Division Lee also knew. Wilburn said it was no secret he supported the Union or that he was seen by both management and the employees, all of which had to come through the gate where he handbilled for the Union.

Supervisor Patterson denied having any conversation with Wilburn in which he mentioned Wilburn's handing out union literature at the plant gate. He stated that one morning Wilburn did come into the plant very upset, took off his sweater, slammed it against the floor, and said some son-of-a-bitch had called him the night before threatening him because he had been at the gate passing out union leaflets. Patterson said he told Wilburn he had not called him and had Wilburn speak with General Manager of the Yarn Division Lee. Lee, in Patterson's presence, told Wilburn if he was too upset to operate his machine he should go home and they would get someone to fill in for him. Wilburn indicated he could handle his job. Patterson specifically denied ever telling Wilburn he knew who was passing out union leaflets at the company gate.

I am persuaded, based on demeanor, that Wilburn testified truthfully about his conversation with Patterson related to handbilling at the plant gate. I am, however, persuaded nothing Wilburn attributes to Patterson constitutes an unlawful impression of surveillance of employees' union activities. The Board has long held that an employer's mere observation of open public union activity on or near its property does not constitute unlawful surveillance. See *Hoschton Garment Co.*, 279 NLRB 565 (1986), and *Impact Industries*, 285

NLRB 5 at fn. 2 (1987). In the instant case, Wilburn was a known union supporter who made no effort to hide his activities on behalf of the Union. He positioned himself at the gate through which all employees and management entered the plant and was specifically observed doing so. There is no showing on this record that the employer, and more particularly Patterson, continuously scrutinized the employees' handbilling activities nor is there any showing that Patterson more closely observed Wilburn's handbilling activities than any other employee's. Simply stated, when an employee engages in union activities openly on or near an employer's property, the employee may not then be heard to complain that he was observed doing so. Accordingly, I shall dismiss paragraph 16 of the complaint.

L. Alleged Threats to Close the Plants

Employee L. Foster testified Supervisor Hart sought him out approximately 1 week before the Board conducted election to discuss the Union. L. Foster stated Hart told him to think very seriously about the upcoming representation election "[b]ecause if the Union came in here, what we have, we could lose" and "Mr. Swift could close the doors on the company if the Union gets here."

Employee Wilburn testified Supervisor Patterson told him in a discussion about the Union a few days before the election:

That before Mr. Swift let a union come in, he will buy yarn outside and padlock the door. And that by January the first, there wouldn't nobody have a job.

Employee Jones testified about certain comments she said President Parham made at an October meeting with employees. The remarks she attributed to Parham are set forth in pertinent part elsewhere in this decision and need not be repeated here except for the following:

You need to get the yarn out on time. If you don't get it out on time the customers will buy the yarn from somebody else. And then there goes the customers—there goes the company.

Eufala, Alabama location Supervisor Hart testified he had two conversations with employee L. Foster about the Union. The first, he said, took place in early November. He informed Foster that there was a union trying to organize the employees at the plant and that the outcome could go either way. He advised Foster the decision with respect to the Union was strictly his but he wanted him to know about an experience he had with a previous company which had a union and at that company the union did not do anything for him. Hart said he had a second conversation with Foster about 2 weeks later but after that second conversation he decided not to talk any further with L. Foster because he had observed Foster at the plant entrance wearing a union shirt and he decided Foster had already made up his mind about the Union. Hart specifically denied ever telling Foster that if the Union won the election, the employees could or would lose what they had or that he said anything to that effect. He also denied telling Foster that if the Union won the election, Swift could or would close the doors of the Company, or words to that effect.

¹⁸I would reach the same legal conclusion that I do even if Patterson's testimony alone was accepted.

I credit L. Foster's testimony. Although he at times seemed somewhat confused during cross-examination, I am persuaded his confusion was honest and not caused by a deliberate attempt to misstate the truth.

Supervisor Patterson testified employee Wilburn worked under his supervision and that he talked with Wilburn on approximately three separate occasions about the Union. He said they even talked about the possibility of the plant closing. Patterson testified Wilburn asked if he had heard the plant was going to close. Patterson told Wilburn he had not. Patterson stated he told Foster "if the company wouldn't be competitive with other companies, I would think the company wouldn't operate under a loss." Patterson testified Wilburn asked who would get hurt if the Company closed. Patterson said he told him everyone including himself. Patterson specifically denied telling Wilburn or any other employee that before a union came in at the Company, Smith would padlock the doors and no one would have a job.

There is no dispute that Patterson and Wilburn discussed the possibility of the Company closing. Nor is there any dispute that the two of them talked on various occasions about the Union. I am persuaded employee Wilburn's recollection is more reliable than Patterson's. Accordingly, I credit Wilburn testimony.

As indicated elsewhere in this Decision, I found employee Jones to be a reliable witness and credit her testimony with respect to the comments she attributed to President Parham about the possibility of the Company losing customers and going out of business.

The credited evidence establishes that Supervisors Hart's and Patterson's as well as President Parham's statements (set forth above) exceeded the permissible bounds of expressions of opinion protected by Section 8(c) of the Act. The three management officials equating unionization with the closing of the Company was not based on objective facts or probable consequences beyond the Company's control but rather were unlawful threats of plant closure. Simply stated, the three management officials gave no factual basis for their predictions the Company would lose customers and close as a result of unionization. Accordingly, I find the Company violated Section 8(a)(1) of the Act by threatening its employees it would close its plants if they joined or engaged in activities on behalf of the Union.

M. Alleged Threats of Loss of Benefits and a Reduction in Pay

It is undisputed that supporters of the Union placed an advertisement in the *Eufala Tribune*, a local newspaper serving Eufala, Alabama, on November 10. It is likewise undisputed that Supervisor Patterson had a copy of the newspaper in the plant and that employee Jones asked if she could see it.¹⁹ Employee Person who was also present at the time testified Patterson said if it was him, he would not have gone public about supporting the Union in the manner the employees had done in the newspaper. Person testified she told Patterson "there ain't no use in trying to hide" support for the Union. According to Person, Patterson then told she and Jones:

If you get a union . . . , you're going to go to bargaining . . . you are going to have to start with a big zero . . . You've got seven paid holidays. They are going to take all of them away from you but two. And he said that the minimum—they could take us back to minimum wage, and that was \$3.35 an hour, because that is all the law required them to pay us, anyway.²⁰

Supervisor Patterson testified he had a copy of the *Eufala Tribune* in the plant on November 11, and that employee Jones asked him to look at it and invited employee Person to also examine the paper. Patterson said the two employees looked at the article, laughed, and said "You can't trust anybody around here." He testified employee Person then started a conversation about negotiations and "I told her I didn't know anything about negotiating. But she had a union book she said she had been reading, that I could read. I said I didn't care anything about reading it. . . . Well, she just told me that they get better benefits, no higher—wages increased. I told her if that's what you call negotiating I say could she get better benefits but she might lose some of her pay, might go down to minimum wage, three thirty-five an hour." Patterson denied telling Jones or Person they could possibly lose benefits or that they would lose everything if the Union won the election. He also denied telling them if they got a union, negotiations would start with a big zero or that employees would lose all but two of their seven holidays.

I credit Person's and Jones' testimony with respect to their discussions with Supervisor Patterson related to the newspaper article and negotiations. As is indicated elsewhere in this Decision, Patterson (and others) engaged in conduct found to violate the Act and I am persuaded what is attributed to Patterson by employees Jones and Person is consistent with other statements made by Patterson and other supervisory personnel.

Based on the credited testimony, I am persuaded Patterson's comments to the two employees in question that they would lose all but two of their holidays, that they would start with zero benefits, and that they could have their pay reduced to \$3.35 per hour were not made in connection with discussions of the results of good faith bargaining but were rather out right threats of loss of existing benefits as well as pay as a direct result of selecting the Union as their collective-bargaining representative. Accordingly, I find the Company violated the Act as alleged in the complaint through Supervisor Patterson's threats of loss of benefits and pay.

N. The Objections

As noted, the Union filed objections to the conduct of the November election. Its Objections 1 through 7, 9, and 10 in unit A, and Objections 1 through 7, 9, and 11 in unit B were identical with the allegations of the complaint and were consolidated for hearing with the complaint. I have rejected the contentions contained in Objections 7 and 8 in unit A and Objections 8 and 10 in unit B and recommend they be overruled.

I have found the Company solicited grievances and promised to remedy same if its employees rejected the Union, threatened its employees with disciplinary action if they were

¹⁹ Jones testified she was one of those who signed a letter that was placed as an advertisement in the newspaper.

²⁰ Jones testified Patterson said, "[Y]ou know, you could lose everything. You know, you could go back down to \$3.35 Everything will be on the table, and you can lose benefits you've already got."

caught talking about the Union, threatened its employees with discharge if they joined or engaged in activities on behalf of the Union, promised to protect its employees jobs if they rejected the Union, promised its employees they would get the benefits they wanted if they rejected the Union but would not if they selected the Union as their collective-bargaining representative, prohibited its employees from distributing prounion literature on company property during working hours while allowing distribution of antiunion literature; threatened its employees with loss of jobs if they joined or engaged in activities on behalf of the Union, threatened its employees that the Company's customers would cease doing business with the Company unless the employees rejected the Union, promised its employees improved retirement benefits if they rejected the Union, threatened plant closure if its employees engaged in activities on behalf of or joined the Union, and threatened its employees with loss of benefits and pay if they selected the Union as their collective-bargaining representative—all in violation of Section 8(a)(1) of the Act. Pursuant to the Board's usual policy, a new election is to be directed "whenever an unfair labor practice occurs during the critical period since '[c]onduct violative of Section 8(a)(1) is, a fortiori, conduct which interferes with the exercise of a free and untrammelled choice in an election.'" *Dal-Tex Optical Co.*, 137 NLRB 1782, 1786 (1962), quoted with approval in *Clark Equipment Co.*, 278 NLRB 498 (1986). Accordingly, I recommend that the election conducted on November 17 and 18 be set aside on the basis of the Union's objections referred to above and a rerun election be conducted.

THE REMEDY

Having found the Company has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. Columbus Mills, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC is a labor organization within the meaning of Section 2(5) of the Act.

3. By soliciting grievances and promising to remedy same if its employees rejected the Union; by threatening its employees with disciplinary actions if caught talking about the Union; by threatening its employees with discharge if they joined or engaged in activities on behalf of the Union; by promising to protect its employees' jobs if they rejected the Union; by promising its employees they would get the benefits they wanted if they rejected the Union but would not if they selected the Union as their collective-bargaining representative; by prohibiting its employees from distributing prounion literature on company property during working hours while allowing the distribution of antiunion literature; by threatening loss of jobs if the employees joined or engaged in activities on behalf of the Union; by threatening employees its customers would cease doing business with it unless the employees rejected the Union; by promising its

employees improved retirement benefits if the employees rejected the Union; by threatening plant closure if the employees engaged in activities on behalf of the Union; and by threatening its employees with loss of benefits and pay if they selected the Union as their collective-bargaining representative, the Company violated Section 8(a)(1) of the Act.

4. The unfair labor practices described above are unfair labor practices affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

5. The Company has not engaged in any unfair labor practices or objectionable conduct not specifically found herein.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended²¹

ORDER

The Respondent, Columbus Mills, Inc., Eufala, Phoenix City, and Union Springs, Alabama, and Columbus, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Soliciting grievances from its employees and promising to remedy same if its employees rejected the Union.

(b) Threatening employees with disciplinary action if they are caught talking about the Union.

(c) Threatening employees with discharge if they join or engage in activities on behalf of the Union.

(d) Promising to protect employees' jobs if they reject the Union.

(e) Promising its employees they would get the benefits they wanted if they rejected the Union but would not if they selected the Union as their collective-bargaining representative.

(f) Prohibiting the distribution of prounion literature on company property during working hours while allowing the distribution of antiunion literature.

(g) Threatening loss of jobs if its employees joined or engaged in activities on behalf of the Union.

(h) Threatening employees its customers would cease doing business with it unless its employees rejected the Union.

(i) Promising its employees improved retirement benefits to reject the Union.

(j) Threatening plant closure if its employees joined or engaged in activities on behalf of the Union.

(k) Threatening its employees with loss of benefits and pay if they selected the Union as their collective-bargaining representative.

(l) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its Columbus, Georgia, Phoenix City, Union Springs, and Eufala, Alabama facilities, copies of the attached notice marked "Appendix."²² Copies of the notice,

²¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

²² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

on forms provided by the Regional Director for Region 10, after being signed by the Company's authorized representative, shall be posted by the Company immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Company has taken to comply.

IT IS FURTHER RECOMMENDED that the complaint be dismissed in all other respects and IT IS FURTHER RECOMMENDED that Case 10-RC-13769 be severed from Cases 10-CA-23883 and 10-CA-24111, and be remanded to the Regional Director for Region 10 who shall conduct a rerun election at such time as he deems the circumstances permit a free choice on the issue of representation.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT solicit grievances and promise to remedy same if you reject Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC as your collective-bargaining representative.

WE WILL NOT threaten you with disciplinary actions if you are caught talking about the Union.

WE WILL NOT threaten you with discharge if you join or engage in activities on behalf of the Union.

WE WILL NOT promise to protect your jobs if you reject the Union.

WE WILL NOT promise you will get the benefits you want if you reject the Union but will not if you select the Union as your collective-bargaining representative.

WE WILL NOT prohibit you from distributing prounion literature on our property during working hours while allowing the distribution of antiunion literature.

WE WILL NOT threaten you with loss of your jobs if you join or engage in activities on behalf of the Union.

WE WILL NOT threaten you that our customers will cease doing business with us unless you reject the Union.

WE WILL NOT promise you improved retirement benefits if you reject the Union.

WE WILL NOT threaten to close our facilities if you join or engage in activities on behalf of the Union.

WE WILL NOT threaten you with loss of benefits and pay if you select the Union as your collective-bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you under Section 7 of the Act.

COLUMBUS MILLS, INC.